IN THE HIGH COURT OF JUDICATURE OF BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3153 OF 1995

Hotel Damjis (mandap) Bar and Restaurants
Through its Manager-
Mr. K. Ashok Rai,
Vishwashanti Apartment,
Building No.E 1/25, Room No.C-6, Sector-8
Nerul, Navi Mumbai 400 076 .. Petitioner

Versus

1. Dy. Commissioner of Police
   Theatre Branch, Mumbai

2. Senior Inspector of Police
   Vile Parle(East) Police Station,
   Mumbai 400 058

3. The State of Maharashtra .. Respondents

WITH
WRIT PETITION NO. 3550 OF 1995

Hotel Bhartiya Bhavan Bar
and Restaurant
Through its Prop.
Shri Raju Shetty,
Shanti Nagar, Sector-6, B-31,
Flot No.302,
Mira Road (East), Dist.Thane .. Petitioner

Versus

1. Dy. Commissioner of Police
   Theatre Branch, Mumbai

2. Senior Inspector of Police

Andheri (W) Police Station,
Mumbai 400 058

3. The State of Maharashtra .. Respondents

WITH
WRIT PETITION NO. 3577 OF 1995

Tirtahadas B. Mansinghani
Prop. Of Hotel Kings Palace
Linking Road, Khar(W),
Mumbai 40 052 .. Petitioner

Versus

1. The State of Maharashtra

2. Dy. Commissioner of Police
Crawford Market, Mumbai

3. Senior Inspector of Police
Khar (W) Police Station,
Mumbai 400 052 .. Respondents

Mr. S. P Kanuga i/b Miss Bobby Malhotra for the petitioners
Mr. Nitin Deshpande, AGP for the respondents.

CORAM: MRS. MRIDULA BHATKAR, J.

DATED: 13th March, 2009

J U D G E M E N T

The issue involved in all these three petitions, is one and the same. Hence these petitions are decided and disposed of by this common order.

Facts:

1. **Writ Petition No. 3153 of 1995**

In this petition, the petitioner has challenged the action of the respondents restraining the petitioner from having music and dance at his restaurant. The application of the petitioner for such performance licence dated 29.3.1995 was not considered by the respondents. According to the petitioner, its dominant purpose is to provide food and drinks to the people who enter the premises. Music/dance/ orchestra is an ancillary activity. The artists are amature or strugglers. No advertisement is given for such performance. From 15th October, 1994, it is obligatory to obtain performance licence at the place of public entertainment, if dances or music or orchestra are performed. Therefore, the petitioner prayed for direction to the respondents to consider the application of the petitioner dated 29.3.1995 for grant of licence without insisting upon a premises licence.

2. Writ Petition No. 3550 of 1995

This petition is directed against the order dated 15.7.1995 passed by the Dy. Commissioner of Police, Gr. Bombay rejecting the application of the petitioner for grant of performance licence, dated 4.6.1994. The petitioner provides food and drinks to the customers who enter the petitioner restaurant for that purpose and by way of ancillary activity the petitioner introduced band as well as dance on recorded music for sometime at night for which no fees or money is collected or intended to be collected. Such programme is neither advertised nor invitation is sent to the customer as they are not for public amusement. The application for such performance licnece is rejected on the ground of

insufficient area and for want of premises licence. The petitioner has challenged the said order on the ground that premises licence is not necessary as the place sanctioned is the place for keeping the public entertainment and not public amusement and prayed that the said order be quashed and set aside and consider the performance licence without insisting on premises licence.

3) Writ Petition No. 3577 of 1995

This petition is directed against the order dated 7.6.1995 passed by the Commissioner of Police, Gr. Bombay rejecting the application of the petitioner for grant of performance licence, dated 1.12.1993 on the ground that some females were found indulging into illegal activities outside the hotel, hence cases under Section 110 of Cr. P. C. were registered against them. The petitioner has challenged the said order on the ground that premises licence is not necessary as the place sanctioned is the place for keeping the public entertainment and not public amusement and contending that the principles of natural justice are not followed, the petitioner prayed that the said order be quashed and set aside and consider the performance licence without insisting on premises licence.

4. In all the three petitions, the petitioners are running Restaurant and Bar. They are the place of public entertainment within the meaning of Clause 10 of Section 2 of the Bombay Police Act, 1951 and the petitioners are holding the licences under the

said Act to run the public entertainment. Food and drinks are served to the public in these hotels. However, the petitioners have started music, orchestra and dance on recorded music for the customers who used to visit to these hotels. But, the Commissioner of police, after 15th October, 1994, as per amendment to the Bombay Police Act, issued notification and imposed restriction on holding musical dancing , dramatic, mimetic, theatrical or other performance of public amusement, including Melas and Tamashas or for public exhibition or games and therefore, the petitioners had approached the Commissioners of police for such performance licence.

5. **Submissions**: Learned Advocate appearing for the petitioner has confined his argument in respect of Petition No. 3577 of 1995. He said that he is challenging the order of the Police Commissioner mainly on the ground of violation of natural justice. He submitted that the incidents of lodging criminal cases against six females outside the hotel premises and establishing connection of these six cases of the females with the Hotel premises is arbitrary. While rejecting the application seeking permission, the petitioners were not given opportunity of audience and they have been kept in dark and the unrelated incidents have been considered in the decision making process . If the opportunity to refute those charges would not have been denied to the petitioners, then the decision of rejection would not have taken by the Commissioner.

6. While arguing the case of natural justice the learned Advocate relied on State of Orissa Vs. Dr. (Miss) Binapani Dei and others, reported in AIR 1967 SC 1269 and submitted that he does not want to press any other point of obtaining licence for the public amusement or for the dance performance in view of the subsequent changes in the rules framed under the Bombay Police Act and the said issue is pending before the Hon'ble Supreme Court. He restricted his reliefs in all the 3 petitions to the orchestra or the musical performance by unknown /strugglers/new comer artists.

7. The learned AGP, while countering the submissions of the learned Advocate for the petitioners submitted that the licence for any public performance including music or orchestra is required to be obtained by the petitioners in view of the amended rule 21 dated 15th October, 1994. He relied on the unreported ruling of the Hon'ble Division Bench of this Court in the case of Damodar S. Mudaliar Vs. State of Maharashtra in Writ petition No. 24 of 1998. The Learned AGP further submitted that the petitioners are running their business and and holding orchestra in their hotels since last 15 years as the ad interim reliefs in their favour was granted by this Court at the time of admission. The petitioners, in fact are liable to pay the penalty or required charge for using the premises for public amusement. The police officials have not charged any amount from the Hoteliers as the matter was subjudiced and in apprehension that it may amount to contempt. So that position is to be clarified.

8. **Consideration**: These three petitions have been filed in the year 1995 i.e. immediately after the amendment in Rules for Keeping Places for Public Entertainment in Greater Bombay (Amendment) Rules,1994 was enforced. Rule No.21 was amended on 15th October, 1994 and by that amendment, the Government made it compulsory to obtain performance licence for public amusement. In the meantime, the Government of Maharashtra made legislation prohibiting dance performance on vocal or recorded music at public entertainment places and the said enactment is under challenge, pending before the Hon'ble Apex Court. Hence, the relief of dance performance cannot be sought and considered in view of pendancy of the matter before the Hon'ble Apex Court.

9. In all the three matters interim relief was granted. Since 1995 till today, the music performance has been staged in all the three restaurants . In Writ petition No.3153 of 1995, the petitioner has sought relief that the respondents be directed to consider the application of the petitioner dated 29.3.195 for granting performance licence without insisting upon premises licence. In Writ petition No. 3550, the Commissioner of police, by letter dated 15.7.1995 had rejected the application of the petitioner dated 4.6.1994 requesting to permit for conducting entertainment programme of Indian dance and orchestra. While rejecting the said application, the Police commissioner has mentioned that necessary documents were not furnished and that the total area of the premises, 300 sq. ft. including the area of the stage, is very insufficient and the police have demanded archetects' plan in

accordance with the rules and also NOC of the BMC.

10. Unreported ruling of the Hon'ble Division Bench of this Court in the case of Damodar S. Mudaliar Vs. State of Maharashtra in Writ Petition No. 24 of 1998 , is relied on the point of mandatory requirement of performance licence u/s 21, for music or any such performance at the place of public entertainment. Thus, within the frame work of the Rules under- Keeping place of Public Entertainment in Greater Bombay (Amendment)Rules 1994, the Police Commissioner has taken correct decision while rejecting the application for performance licence in respect of Writ petition 3550/1995. The application for performance licence, in Writ petition No. 3153 of 1995, is yet pending before the Commissioner of Police.

11. In respect of the third Writ Petition No.3577/95, while rejecting the application dated 1.12.1993, the Commissioner of Police had mentioned about some unlawful activities of females outside the premises of the petitioner, lodging criminal case under Section 110 of Cr.P.C. against six ladies, without hearing the petitioners. In the case of **Binapani Dei (supra)** the Hon'ble Apex Court ruled that -

> "even administrative orders which involve civil consequences have to be passed consistently with the rules of natural justice".

Thus, it was necessary for the Police Commissioner after making petitioners aware of the incident, the petitioners should have been given hearing and then ought to have passed

the orders. Principles of natural justice should been respected by the Commissioner of police.

12. Due to the subsequent enactment, the State of Maharashtra, banned the dance performance and as the matter is pending before the Hon'ble Apex Court, that issue cannot be dealt with. So, the issue of performance of music is only kept open for the Police commissioner to decide. The requirements of area, stage, acoustics , etc. vary from the types of performance. The period of 14 years has been lapsed. On this backdrop and considering the efflux of time, the petitioners in Writ Petition No. 3153/95 and 3577 of 1995 to apply fresh for the performance licence as per rules and the Commissioner of Police to decide it, in accordance with law. It is clarified that there was no legal impediment for the Police not to charge fees or penalty whichever is prescribed as per the law when the music is being performed at the restaurants since 1995 till today pursuant to the orders of interim relief.

In the result, all the three petitions are disposed of by this common order with separate findings in each.

(A) With the disposal of the petitions, the orders of interim relief come to an end, in view of the mandatory requirement of the performance licence as required under Rule 21 of Keeping place of Public Entertainment in Greater Bombay (Amendment) Rules 1994 framed under the Bombay Police Act.

(B) The petitioners in Writ Petition No. 3153 of 1995 and 3577

of 1995 to apply fresh and the Commissioner of Police or the concerned authority to decide those applications at the earliest, in accordance with law.

(C) As regards Writ Petition No. 3550, decision taken Police Commissioner vide order dated 15.7.1995 is correct and legal. So, no interference is required in the said order. However, it is made clear that the petitioner may apply afresh after due compliance of the requirements.

Rule is discharged.

(MRIDULA BHATKAR, J.)

jpc/-